



City of Rockville

MEMORANDUM

November 26, 2003

TO: Planning Commission

FROM: Jim Wasilak, Chief of Long Range Planning

SUBJECT: Worksession: East Rockville Neighborhood Plan

The purpose of this worksession is for the Planning Commission to discuss issues that were noted at the Commission's meeting on November 5. Those issues are as follows, generally:

- Zoning Implementation
 - Options
 - Howard Avenue properties recommended for R-60 zoning
- Realignment of Stonestreet Avenue
 - Right-of-way acquisition and widening
- Loss of industrial land and implication for businesses
 - Where can businesses relocate
- Parkland designation (114 Crabb Avenue)
- Implementation Strategy Study

The following is a brief summary of the issues along with some information for each.

Zoning Implementation

The draft East Rockville Plan recommends zoning changes in the Stonestreet corridor as a catalyst for redevelopment and gradual change in the corridor. Although the draft Plan did not recommend zoning changes that would negatively impact existing businesses immediately, it does establish a vision and framework for the service industrial corridor to transition into a mixed-use area with shops, residences and offices. The draft did not state this intent specifically, and many business owners and property owners in the Stonestreet corridor expressed serious concerns, both at the August public hearing and in subsequent written testimony, about their ability to continue operating existing businesses if the land in the corridor is rezoned. Even though this was not noted in the Plan, it should be noted that rezoning to a different zone with different uses and development standards would not have meant that businesses would have had to close or relocate upon rezoning. Businesses are protected by the nonconforming use provisions (see later explanation) in the Zoning Ordinance, which allows previously existing

legal uses to continue operations even though the use may no longer be permitted in the new zone.

In order to work through the important issue of allowing existing businesses to continue operating in the corridor when new zoning is implemented, the East Rockville Neighborhood Plan Advisory Group (ERNPAG) and the newly-formed East Rockville Business Association (ERBA) met several times to discuss this and other issues. The direction that was agreed upon was that the Plan should allow for existing businesses to continue operating, while also allowing property owners to redevelop per the recommendations in the Plan for mixed-use, Main Street-style development. Considerable discussion focused on potential zoning definitions and mechanisms to allow for these concepts to be implemented. Ultimately it was determined that clearly articulating the intent of the future zoning provisions in the Plan was most important, accompanied by a recommendation for the creation of a new zone (TCE, Town Center East) that can be written specifically for the conditions and desires for the future of the Stonestreet corridor in mind. The details of permitted uses, potential grandfathering, development standards and how the zone is ultimately implemented in the corridor to be delineated as part of the Implementation Strategies Study that will be undertaken following the adoption of the Plan.

I-1 (Service Industrial) Zone

Approximately 25 acres of land in the corridor is currently in the I-1 Zone, the purpose of which is to provide space for certain industrial uses necessary to serve residents of the City and surrounding areas and to provide general wholesaling and retailing facilities for certain commodities appropriate in an industrial zone. In addition to the Stonestreet corridor, other land in the I-1 Zone is located in the Southlawn Industrial area along Southlawn Lane, Lofstrand Lane and Taft Street, as well as relatively smaller areas on Westmore Road north of Lincoln Park, on Halpine Road near Twinbrook Parkway, and on Southlawn Court off Southlawn Lane. Although the zone provides generally for a mix of service uses, such as warehousing and contractors' offices, many of these areas, including the Stonestreet corridor, have primarily become the home of auto-related uses. Many of these uses are not permitted in other zones in the City. There are limited retail opportunities, and office use must not involve the general public. Residential use is prohibited. The following development standards apply in the I-1 Zone:

Maximum lot coverage	Maximum FAR	Height limitations	Setbacks
50%	.75	40 ft	Front: 25 ft Side and rear: 20 ft abutting nonresidential land; 30 ft or bldg height, whichever is greater, abutting residential land

TCE (Town Center East) Zone

Based on the discussions subsequent to the public hearing, the draft East Rockville Neighborhood Plan recommends the ultimate rezoning of most of the I-1-zoned property to the new TCE (Town Center East) Zone, rather than the TC-1 Zone recommended in the draft. Per the recommendations of the adopted *Town Center Master Plan*, the TC-1 Zone will essentially be a renaming of the existing TCO-1 Zone. The existing TCO-1 Zone provides for office space, with convenience retail uses, within the Town Center Performance District, and acts as a transition between the commercial uses and low density, residential scaled office uses. It is located exclusively along the west side of North Washington Street, between Jefferson Street and Martins Lane. The suggested TCE Zone would use the TC-1 Zone as a basis, but would include its own set of permitted, special exception and prohibited uses which would diverge from the TC-1 and I-1 uses. Permitted uses would allow for the introduction of residential, additional retail, and office uses, oriented and scaled to the surrounding community, in the corridor, provided that those uses are compatible with the vision and intent expressed in the Plan. Because uses are very specific in the Zoning Ordinance, a careful review of each potential use would need to be undertaken in the Implementation Strategy Study. In addition, appropriate development standards and limitations on new construction would be developed as well. It should be noted that development potential in the TCE Zone, not including market factors and taking into account the differences in permitted uses, is potentially greater, due to its higher FAR (1.0, taken from the TC-1 Zone) and less restrictive setbacks and lot coverage limitations.

Important Zoning Definitions

When zoning changes occur in a developed area, there are important concepts that pertain to uses and structures that may no longer meet the permitted use requirements and development standards of the new zone, including nonconforming uses, development nonconformities and grandfathering.

Nonconforming uses: A nonconforming use refers to the use of a building or structure that lawfully existed prior to the effective date of the current Zoning Ordinance, and which now does not conform to the use restrictions found in the ordinance. The Zoning Ordinance allows nonconforming uses to continue, but those uses may not be extended, altered or expanded, except into those parts of a building that were constructed specifically for such use prior to the adoption of the Ordinance. Major reconstruction of a structure containing a nonconforming use is permitted only to bring the structure into compliance with the use restrictions, or to maintain the building in safe repair. The right to continue operating a nonconforming use terminates when such use does not exist for a period of three calendar months, through damage or deterioration in which the cost of repairing the structure housing the nonconforming use exceeds 50 percent of the replacement cost, or a nonconforming use ceases and is replaced by another use, regardless of whether that use is a prohibited, permitted or special exception use. As an example, if property in the I-1 Zone was rezoned to a zone that did not allow the retailing of boats, an existing boat retailer could continue operations as before, but could not expand the use. If any of

the above-mentioned three criteria were met that would require termination, the use would not be allowed to continue.

Development Nonconformities: A development nonconformity refers to any aspect of a structure, other than its use, that was lawful according to the Zoning Ordinance immediately prior to the current edition, but which now does not conform to current requirements. These may be other requirements such as setback and height limitations or parking requirements. Development nonconformities also cannot be expanded, extended or altered, except to a portion of the building that was complete or substantially complete previously and complied with the ordinance. Buildings containing a development nonconformity may be expanded if the alteration or expansion does not expand the nonconformity. For example, if a structure does not meet a setback requirement, it cannot be expanded on the nonconforming side, which would increase the nonconformity. Structural alterations to a development nonconformity may be made only to eliminate the development nonconformity or to maintain the building in safe repair. Structural alteration cannot include major reconstruction, and the right of the development nonconformity to continue shall cease if damage or deterioration exceeds 50 percent of the replacement cost of the development nonconformity.

Grandfathering: Over the years, the City Zoning Ordinance has allowed for specific exceptions to these definitions when new zones have been implemented. Grandfathering allows uses that may not comply with the new use restrictions, or structures that may not comply with new development standards, to continue operation subject to certain limitations. Typically, grandfathering provisions can be tailored to specific uses or standards, such that the use may be categorized differently than a nonconforming use, with its continued operations subject to certain provisions. For example, in the City's TCO-1 Zone, a gas station that legally existed prior to the rezoning of the land to TCO-1, is specifically cited in the Zoning Ordinance as not being regarded as a nonconforming use and, if damaged, can only be rebuilt to the extent of the original floor area existing when damaged. Hotels in the TCO-1 may not be considered a nonconforming use and may be expanded and enlarged in accordance with the new zoning requirements. The practical effect of these exceptions is to allow the uses to continue, and expand in some cases, while not allowing new uses of similar type to locate in the zone.

Zoning Options

The Advisory Group and Business Association's working groups discussed several options for implementation of new zoning in the corridor, including:

Rezoning: Master Plans typically recommend zoning changes within the area covered by the Plan. These may be either to an existing zone that the jurisdiction has already created, or to a new zone that will be created as a result of the Master Plan recommendations. The implication for property owners and tenants is that certain uses may no longer be permitted in the new zone, while others would be allowed to continue with minimal impact. Another implication is if new standards are created, redevelopment of property would be subject to these new requirements. Rezoning would probably create some nonconforming uses and development nonconformities,

and these would be subject to the regulations regarding these noted previously. However, certain grandfathering provisions, such as those noted deeming certain uses as conforming, typically accompany such action. As an example, in the 1980s, the City adopted a new Master Plan for the Rockville Pike corridor, and within that document, recommended the creation of a new zone (RPC – Rockville Pike Commercial) and the rezoning of most of the corridor to the new zone. This action eliminated “auto repair garage” as a permitted use, yet those facilities that existed have continued.

A corollary to this option is to create a new zone that can meet the needs of existing uses, while encouraging a more gradual transition to the desired future outlined in the Master Plan. The creation of a “hybrid zone” requires detailed review of all of the permitted uses in the new zone, to ensure that the new zone meets the intent. The implications here are that the transition to new uses and forms of development will be more gradual over time, with new uses and buildings co-existing with established uses and structures. This can have some negative impacts on both new and old, depending on the conflicts that may arise. For property owners and businesses not wanting to redevelop, this allows them to continue as permitted uses (provided they are included in the new use list), while allowing those who wish to do redevelop their property an opportunity to do so.

Optional Method of Development: This provides for an alternate form of development within the bounds of the existing zone definition. Essentially, this applies to new development that is approved under a different process (“optional method”) than would normally be employed (use permit). Specific criteria are included so that the optional method of development may not be achievable by all property owners, and the effect of the optional method is that, in exchange for certain bonuses (usually increased density), the property owner or developer must meet certain criteria or provide certain amenities to offset the increased density. This has been employed successfully in Montgomery County, primarily in the Central Business Districts of Silver Spring and Bethesda. The City also includes this option in the I-3 (Industrial Park) Zone, O-1 (Office Building) Zone, RPC Zone, and TCM-1 and TCM-2 Zones. This option can be attractive for property owners as it provides an incentive for redevelopment, and can be employed where extensive redevelopment is desired. It does not, however, offer protections to tenants unless they would be relocated to the new construction.

Floating Zone: A floating zone refers to a zone that may not be immediately applied by action of the jurisdiction as part of a Master Plan recommendation, but one which is established through certain criteria being met and an approval requested by the property owner. The zoning is then established for individual properties by approval of the jurisdiction, upon a finding that the criteria have been met. The Master Plan would define the area where the floating zone could apply, and the contents of the floating zone. This option allows development to proceed at the pace of the property owner, but offers some risk to the owner in that another zoning action by the jurisdiction is required. On the other hand, employment of a floating zone does not offer much protection for the neighborhood, in that the I-1 Zone property potentially could remain in its current state for some time, absent incentives to implement the new zone. This could delay

realization of the Plan's vision for the corridor. Note that the City does not currently have the floating zone mechanism, but it has been employed in Montgomery County.

Overlay Zone: This technique essentially would apply the standards of a new zone to property, without changing the existing zoning. The standards of two zones would apply, allowing both existing uses to continue while offering some incentives for redevelopment under the newly applied overlay zone. This offers some protection to existing property and business owners, in that the existing standards would continue without the need for grandfathering. However, as with floating zones, it may be difficult to determine the pace of transition if incentives are not also provided.

Each of these techniques offer opportunities for retention of existing uses, while providing incentives for redevelopment of properties as well. Some of these may be more attractive to property owners than others, which will impact the timing of the transition of any area from what exists to what is envisioned.

Recommendation:

After considerable discussion, the best option to resolve the interests of both the neighborhood and the businesses was determined to be the creation and implementation of a new TCE Zone. This zone can be crafted to meet the intent and vision of the Plan through careful review and development of the zone's permitted uses and development standards. In conjunction with the implementation of a new zone, specific grandfathering standards would be necessary to allow existing uses to be allowed to continue in the corridor, even though some of the uses would not be permitted in the new zone. This allows specific uses to continue and thrive, subject to certain criteria that can be studied in the Implementation Strategy Study, and then subsequently implemented through Zoning Text and Zoning Map Amendments.

Although most of the property currently in the I-1 Zone would receive the new TCE Zone, certain properties at the southeast corner of Howard Avenue and North Stonestreet Avenue had been recommended to be rezoned to the R-60 Zone in order to permit redevelopment of those



properties as single family homes compatible with the residential character on the remainder of Howard Avenue. These four properties, containing 2.7 acres, contain a mix of office and service industrial uses currently, and two of the owners have expressed concerns that rezoning to R-60 would severely impact the viability of the businesses as well as future value of the property for redevelopment. Although the existing uses would be grandfathered under the recommendations from the Plan, the likelihood or desirability of redevelopment as single-family homes is limited.

An evaluation of this proposal as well as surrounding proposed land uses has resulted in a revised recommendation for these parcels which achieve the objectives of the original recommendation but which also provide some protection for the existing businesses and property owners' investments. The two parcels that front on North Stonestreet Avenue would be recommended for the new TCE Zone, while the two parcels that front on Howard Avenue would continue to be recommended for the R-60 Zone, but with support included in the Plan for townhouses, rather than single-family homes, on the properties. This could be implemented through the Residential Townhouse (RTH) Special Development Procedure. A landscaped buffer would be required to be provided between the new residential units and the existing neighborhood, per the Plan. In conjunction with this change in land use and zoning recommendations, the TCE portion of the MCPS property could also be designated as the preferred location for the Science Complex, given the size of the parcels and the fact that it is under single ownership presently.

Stonestreet Realignment and Reconfiguration

The draft Plan recommends that Stonestreet Avenue become a boulevard, with landscaped center median, wide sidewalks, on-street parking and one travelway in each direction. North Stonestreet Avenue is within a right-of-way of variable width, but averages 60 feet. As recommended in the Plan, the new right-of-way would need to be approximately 86 feet. This assumes 20 feet of pedestrian and planting zone on either side of the roadway, as well a median of ten feet. Obviously, this new configuration would require additional right-of-way. A worst-case scenario, if equal amounts were required from each side, would be 13 feet. Due to building placement and property configuration in the corridor, this would have serious impacts on many existing properties. North Stonestreet Avenue was widened previously, from 50 feet to 60 feet in right-of-way width. What typically occurs in these situations is that once a roadway section is identified through a Master Plan, redevelopment on abutting properties will trigger the requirement for right-of-way dedication. Also typical in road widenings is the use of eminent domain to acquire the needed width.

In addition, the roadway as conceived would need to be realigned near its intersection with Park Road to accommodate its connection with the proposed traffic circle and South Stonestreet Avenue. The conceptual alignment in the Plan indicates property impacts on the east side of the existing North Stonestreet Avenue, between Woodland Road and Park Road. This allows for the two intersecting segments of Stonestreet Avenue to be resolved in the traffic circle. To address business and property owner concerns about property impacts, the addendum and errata sheet included language that the alignment shown is conceptual, and subject to final design and engineering.

The issue has been raised as to how both the widening and the realignment would be accomplished. Several factors come into play, including the final alignment and configuration of the traffic circle and the intersecting streets. In anticipation of offering the Metro station site for future redevelopment, WMATA has begun an access study of the site that includes options for vehicle, taxi, bus, bicycle and pedestrian access to the site when it is redeveloped. That study

may define access points further and have some influence on the configuration. Also, it may be possible to phase in the street upgrade, either by block or as properties redevelop. It may be possible to implement a modified section, accommodating the travelways and parking but not the sidewalks, within the existing right-of-way as an interim step. Pedestrian amenity space would then be added as properties redevelop or reconfigure. Because the street upgrade and realignment are closely linked to redevelopment, a key component of the Implementation Strategy Study will be not only final design and engineering inputs, but how and when to accomplish the upgrade.

Industrial Land in Rockville

Clearly, the service-industrial zoned land in Rockville is important to the City's economy as a prime location for small businesses and needed service providers for city residents and workers. As recommended by the Plan, the Stonestreet corridor would transition away from an industrial area to more of a broadly defined mixed-use area. Over time as properties redevelop per market forces, there will be less and less service industrial uses in the corridor. Fortunately, through this market-based approach, the likelihood that the market would absorb these uses is greater than in many businesses were looking to relocate at once. Other I-1 zoned property within the City is located in the Gude-Southlawn area, near off Twinbrook Parkway and on Westmore Road. Currently, there is approximately 145,000 square feet of service industrial development approved but not built in the Gude-Southlawn area, with the potential for additional development in this area is likely, especially if some properties that are currently served by well and septic area annexed into the City and redeveloped with public water and sewer service. Both the County and City identified this area, through a joint study in 1998, as an area where industrial land use is appropriate.

One of the goals of the City is to retain small businesses, and to provide service opportunities for residents to take advantage of. To that end, it would be appropriate for the Plan to ultimately include some incentives and programs to assist those tenants that may have to relocate should their properties redevelop. This could include finding available space in the area, but would probably not be at a financial level that is mandated for eminent domain situations. It should be noted that many businesses might be able to remain in their existing location because their use will be permitted in the new TCE Zone.

Potential Parkland Designation

The draft Addendum and Errata Sheet suggested a potential park site on Crabb Avenue, just east of the current industrial area. This property, at 114 Crabb Avenue, consists on 1.72 acres that is subdivided into five lots that date from the original England's Second Addition to Rockville subdivision. All five lots are owned by the same owner, who has been made aware of the potential designation and expressed that they have no desire to sell the property at all, and no desire to sell it to the City. Staff suggests that the Plan continue to recommend this as a potential park site, with the understanding that the City may or may not be able to acquire it, should it become available through normal means.

Implementation Strategy Study

The draft Addendum and Errata Sheet recommended completion of an Implementation Strategy Study, with specific components including:

- Market analysis to provide input to decision-making for uses and development standards in the corridor;
- Zoning potential financial and economic incentives analysis to determine the appropriate mechanism to encourage redevelopment as well as protect existing businesses; and
- Roadway Alignment and Public Improvements study.

This Study will be an essential component of the neighborhood Plan, in that it will determine how the vision expressed in the Plan comes to fruition. As previously noted, this Study has already been funded in the City's Capital Improvements Program (CIP). This study is an opportunity to engage experts in redevelopment, market analysis and economics as well as transportation engineering, to define in one package how the Plan will be implemented. While this is a different strategy than has been employed in previous Plans, it is not particularly unusual in situations where redevelopment is expected. The development of the Plan will be a public process, involving the affected stakeholders, but with more of a technical component than the Neighborhood Plan itself, which has been an opportunity for a neighborhood to express its vision.

Correspondence

After the Commission's November 5 meeting, letters were sent to all property owners, businesses, individuals in the public hearing record informing them of the reopening of the public record and the date of the December 3 worksession. Four letters were received in response to the reopening of the public record (See attachments).

Attachments

1. Letter from Patricia Dubroof
2. Letter from Lisa Petrovich Smith
3. Letter from Phyllis Marcuccio
4. Letter from Erica Leatham